IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 20559 of 2004

Between:

Smt. Biyala Rajeswari, W/o. Mr. Biyala Mallesh,
R/o. Doragaripally, Manchirial Mandal, Adilabad District.

..... PETITIONER

AND

1 The District Collector & District Magistrate, Adilabad District at Adilabad
2 The Govt. of Andhra Pradesh, rep by its Chief Secretary, Secretariat,

Hyderabad.
3 The Superintendent Central Prison, Chanchalguda, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Habeas Corpus under Art. 226 of the Constitution of India directing the respondents to produce the Detenu Mr. Biyala Mallesh, S/o. Ramulu now detained in Central Prison, Chanchalguda, Hyderabad before this Hon'ble Court and he may be ordered to be released forthwith after declaring his detention as illegal and void.

Counsel for the Petitioner:MR.D.BHASKAR REDDY

Counsel for the Respondent No.: THE ADVOCATE GENERAL

The Court made the following :

ORDER : (per Hon'ble Sri Bilal Nazki, J)

This Writ Petition has been filed by Smt. Biyala Rajeswari wife of Sri. Biyala Mallesh (hereinafter referred to as 'the detenu'), who has been detained and is lodged in Central Prison, Chanchalguda, Hyderabad.

The detenu has been detained by an order dated 23.8.2004 in terms of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as 'the Act'). The Collector & District Magistrate, Adilabad, ordered the detention and communicated the grounds of detention to the detenu. The order of detention has been challenged on various counts. One of the grounds for challenging the order of detention is that the detenu had not been informed that he had a right to make a representation to the detaining authority against the order of detention. This fact is not disputed and we have perused the records. The records also do not reveal that the detenu was informed that he had a right to make a representation to the detaining authority against the detention. At the end of the grounds of detention, the detaining authority informed the detenu;

> *"1. You have a right to make representation against this order of detention to the Chief Secretary, Government of Andhra*

Pradesh, A.P., Hyderabad.

2. *You are further informed that the matter will be referred to Advisory Board within three weeks from the date of Detention. However, you have a right to make representation in writing to the Advisory Board. You also have a right to be heard in person before the Advisory Board when it is scheduled to meet to consider the matter."*

The learned Senior Counsel appearing for the petitioner submits that the Government or the Advisory Board would consider the representation of the detenu at a subsequent stage and the detenu had a right to make a representation against the order of detention at the earliest point of time, if he had been informed that he had a right to make a representation to the detaining authority. The learned Government Pleader appearing for Advocate General however, submits that since the detenu had been informed that he has a right to make a representation to the Chief Secretary as well as to the Advisory Board therefore, he does not get prejudiced and if the detaining authority fail to inform the detenu that he had a right to make a representation to the detaining authority, that would not vitiate the detention.

The learned Senior Counsel for the petitioner however, submits that this question is not *res integra* and has already been decided by a Constitutional Bench of the Hon'ble Supreme Court. He further submits that since Article 22 of the Constitution of India gives a right to the detenu to make a representation to the detaining authority, such a right cannot be compromised in any circumstances.

This question has been decided by us in Writ Petition No.20629 of 2004. For the reasons given in that Writ Petition, we allow the present Writ Petition, quash the order of detention and order the release of detenu forthwith if he is not required in any other case. Since we have quashed the order of detention on one ground alone therefore, it is

not necessary to deal with the other grounds agitated by the Senior Counsel. No order as to costs.

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(BILAL NAZKI, J)

9th December, 2004.

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(Ch.S.R.K.PRASAD, J)

ajr

To

1 The District Collector & District Magistrate, Adilabad District, Adilabad
2 The Chief Secretary, Govt. of Andhra Pradesh, Secretariat, Hyderabad.
3 The Superintendent, Central Prison, Chanchalguda, Hyderabad.

4 The Superintendent, Central Jail, Warangal, Warangal District.

5 The Superintendent of Police, Adilabad District, Adilabad.

6 Two C.Cs. to the Advocate General, High Court, Buildings,

Hyderabad (OUT)

7 Two C.D. copies.